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TAIWAN: Proposed Legislation

Text of letter of transmittal and bill submitted to the Congress by the President following a White House briefing on January 26.

TO THE CONGRESS OF THE UNITED STATES:

The United States of America has recognized the Government of the People's Republic of China as the sole legal government of China and is establishing diplomatic relations with that government. The Joint Communique issued by the United States and the People's Republic of China was the culmination of a long process begun by President Nixon and continued by President Ford and me.

I have also announced that, in the future, the American people will maintain commercial, cultural, and other relations with the people on Taiwan without official government representation and without diplomatic relations. In furtherance of that policy, and pending enactment of legislation on the subject, I have directed all departments and agencies to continue unofficially to conduct programs, transactions and other relations with Taiwan.

To authorize legally the permanent implementation of that policy, I am today transmitting to the Congress a bill "to promote the foreign policy of the United States through the maintenance of commercial, cultural and other relations with the people on Taiwan on an unofficial basis, and for other purposes."

This bill will confirm the continued eligibility of the people on Taiwan for participation in programs and activities that under United States law are to be carried out with foreign governments; provide for the carrying out of such programs and activities on an unofficial basis through the American Institute in Taiwan, a non-profit corporation, and the corresponding instrumentality being established by the people on Taiwan; and establish funding, staffing and administrative relationships of the Institute. It also contains other authorizations and provisions relating to the foregoing matters.

I am confident the Congress shares my view that it is in the national interest that these unofficial relations between the American people and the people on Taiwan be maintained. It is highly desirable that this legislation be enacted as promptly as possible. I look forward to working with the Congress on this important project.

CONTENTS

Letter of transmittal	1
Analysis of Proposed Legislation	2
Full Text	4

Jimmy Carter

THE WHITE HOUSE,

January 26, 1979

Section by Section Analysis of the Proposed Act to Promote the Foreign Policy of the United States Through the Maintenance of Commercial, Cultural and Other Relations With the People on Taiwan on an Unofficial Basis, and for Other Purposes

I. INTRODUCTION

The legislation (hereinafter "the Bill") is being proposed as the result of the recognition by the United States of the People's Republic of China as the sole legal government of China and the establishment of diplomatic relations between the United States and the People's Republic of China. Its purpose is to facilitate continuation of commercial, cultural and other relations between the American people and the people on Taiwan on an unofficial basis.

The Bill clarifies the application of laws of the United States to the people on Taiwan in light of the changed diplomatic situation, and provides for the continued conduct of programs and transactions with the people on Taiwan. It also contains a number of provisions on administrative, financial and related subjects which will facilitate this new non-governmental relationship with the people on Taiwan.

The term "people on Taiwan," as used in the Bill, reflects the non-existence of a government to government relationship, and encompasses both the authorities and the inhabitants on the islands of Taiwan and the Pescadores.

II. PROVISIONS OF THE BILL

Section 101

This section provides that legal requirements for the maintenance of diplomatic relations with the United States or recognition of a foreign government by the United States will not be a bar to eligibility of the people on Taiwan for participation in programs, transactions or other relations under U.S. law. This will avoid questions under provisions of law such as section 620(t) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(t)),

which refers explicitly to severance of diplomatic relations. It is also intended to satisfy requirements for diplomatic relations with or recognition by the United States which might be implied by terms such as "friendly country" contained in various statutes.

Section 102

This section specifies that laws, regulations and orders which refer or relate to "foreign countries," or use similar terms, shall continue to include and apply to the people on Taiwan. The President has directed the heads of all departments and agencies to construe such laws as continuing to apply to the people on Taiwan. This directive has facilitated maintenance of unofficial relations pending action by the Congress. This section is intended to confirm continued eligibility of the people on Taiwan under such important legislation as the Arms Export Control Act, Atomic Energy Act of 1954, the Export-Import Bank Act, the Foreign Assistance Act of 1961, the Mutual Educational and Cultural Exchange Act of 1961 and the Trade Act of 1974.

Section 103

This section expressly confirms the authority of the President and departments and agencies to carry out programs, transactions and other relations with the people on Taiwan under laws which provide for such programs, transactions and relations with respect to foreign countries.

Section 104

This section provides that programs, transactions and relations with respect to the people on Taiwan will be conducted by or through the American Institute in Taiwan, in the manner and to the extent directed by the President. This provision implements the President's statement of December 15, 1978 that the American people and the people on Taiwan "will maintain commercial, cultural and other relations without official government representation . . ." The American Institute in Taiwan is a nonprofit corporation organized under the laws of the District of Columbia, which has been established for this purpose.

Section 105

This section provides for the performance and enforcement of existing agreements, and the making of new agreements, with the people on Taiwan by or through the Institute, to satisfy authorizations or requirements for agreements or arrangements with the people on Taiwan. If, for example, an agreement with a "foreign country" is a condition of eligibility for participation in a program, with respect to the people on Taiwan such a condition will be satisfied by an agreement entered into or performed through the Institute. This section applies not only to new agreements, but also to previous agreements, which remain in force unless terminated.

Section 106

This section provides for dealing with the people on Taiwan through an instrumentality acting on their behalf. It makes clear that provisions for dealing with a "foreign government" will be satisfied with respect to the people on Taiwan by dealing with that instrumentality. Sections 104 and 105 and this section provide for the conduct of non-governmental relations through the Institute and the counterpart instrumentality of the people on Taiwan.

Section 107

This section provides that when the application of United States law depends upon foreign law, the law applied by the people on Taiwan shall be looked to for that purpose.

Section 201

This section authorizes departments and agencies to provide support for the Institute's internal operations through transfers of property and the performance of functions and services. This will provide access by the Institute to existing federal resources in order to reduce costs and increase the efficiency of operations. It is expected that such support usually will be provided on a reimbursable basis.

Section 202

This section authorizes departments and agencies to acquire and accept services from the Insti-

tute. Although the initial arrangements with the Institute are on a conventional contractual basis, this section authorizes the President to disregard normally applicable laws and regulations, such as limitations in procurement regulations, in order to permit the development of appropriate arrangements in these unique circumstances.

Section 203

This section authorizes the transfer to the Institute of alien employees of the U.S. Government and preserves their benefits under the local compensation plan applicable in Taiwan under section 444 of the Foreign Service Act of 1946, as amended (22 U.S.C. 889). It is expected that the Institute will adopt this plan for its alien employees. This section also authorizes the continued participation in U.S. Government retirement systems by those transferred alien employees who have heretofore been covered by such systems, subject to continued payment of contributions and deductions to the appropriate fund.

Section 204

This section, consisting of four subsections, provides authority for the separation of federal employees for employment with the Institute, preservation of their federal benefits, and reemployment rights in the federal service. It is contemplated that such separated federal personnel will make up the staff of the Institute.

Subsection (a) provides that a federal officer or employee who accepts employment with the Institute may be separated from his or her agency.

Subsection (b) provides that any officer or employee so separated is entitled, upon termination of employment with the Institute, to be reemployed or reinstated in the federal service. Normally, reemployment for an employee in the classified service will be to the position from which the employee was separated. However, the President is authorized to determine the appropriateness of the position for reemployment. It is anticipated that, especially in personnel systems based on the rank in person concept, reemployment could be in a higher class.

Subsection (c) provides for continuity of

federal benefits during service with the Institute, including compensation for job related death, illness or injury; health and life insurance, leave, and retirement. Contributions, where required, must be paid in order to preserve these benefits. This section also provides that death or retirement by a federal employee separated under subsection (a) while employed by the Institute shall be considered a death in or retirement from the federal service for purposes of benefit entitlement.

Subsection (d) authorizes the extension of the benefits of Title II of the Bill to federal employees serving with the Institute on leave without pay prior to the Bill's enactment.

Section 205

This section addresses several questions relating to the status of the Institute and its employees. It specifies that the Institute shall be exempt from federal taxation and shall not be an agency or instrumentality of the United States. With respect to the Institute's employees, this section provides that they shall not be employees of the United States, and that they shall be exempt from the statutory prohibition against dealing with their former agencies in representing the Institute. It also provides that the salaries and allowances of Institute employees shall be taxable in the same way as salaries and allowances of federal employees.

Section 301

This section authorizes appropriations to the Secretary of State of funds necessary to carry out the Bill. It is contemplated that the funds necessary for the operation and support of the Institute on behalf of all departments and agencies will be consolidated into a single account. However, this section preserves the continued ability of departments and agencies to utilize the Institute for the performance of functions involving the use of funds appropriated to the department or agency concerned. Funds appropriated under this section could be made available until expended.

Section 302

This section authorizes the Secretary of State

to use the funds made available under the Bill to further the maintenance of commercial, cultural and other relations with the people on Taiwan on an unofficial basis. In particular, it authorizes the Secretary to provide these funds to the Institute for this purpose. The use of appropriated funds by the Institute will be governed by an appropriate contractual arrangement with the Secretary of State, which will contain limitations on expenses, such as limitations on the compensation of Institute employees. The Institute will be required under this arrangement to adhere generally to the limitations applicable to federal employees.

Section 303

This section requires that departments and agencies assure access by the Comptroller General to the Institute's books and records, and that they provide the Comptroller General the opportunity to audit the Institute's operations.

Section 304

This section approves and confirms the U.S. Government actions taken since January 1, 1979, and prior to the Bill's enactment with respect to the people on Taiwan.

Section 305

This section authorizes the President to prescribe appropriate rules and regulations to carry out the Bill's purposes.

A BILL

To promote the foreign policy of the United States through the maintenance of commercial, cultural and other relations with the people on Taiwan on an unofficial basis, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Title I

Section 101. No requirement for maintenance of diplomatic relations with the United States, or for recognition of a government by the United

States, as a condition of eligibility for participation in programs, transactions or other relations authorized by or pursuant to United States law shall apply with respect to the people on Taiwan.

Sec. 102. Whenever any law, regulation or order of the United States refers or relates to a foreign country, nation, state, government or similar entity, such terms shall include, and such law, regulation or order shall apply with respect to, the people on Taiwan.

Sec. 103. Whenever authorized or required by or pursuant to United States law to conduct or carry out programs, transactions or other relations with respect to a foreign country, nation, state, government or similar entity, the President or any department or agency of the United States Government is authorized to conduct and carry out such programs, transactions and other relations with respect to the people on Taiwan, in accordance with applicable laws of the United States.

Sec. 104. Programs, transactions and other relations conducted or carried out by the President or any department or agency of the United States Government with respect to the people on Taiwan shall, as the President may direct, be conducted and carried out by or through the American Institute in Taiwan, a nonprofit corporation incorporated under the laws of the District of Columbia (hereinafter "the Institute").

Sec. 105. Whenever the President or any department or agency of the United States Government is authorized or required by or pursuant to United States law to enter into, perform, enforce, or have in force an agreement or arrangement relative to the people on Taiwan, such agreement or arrangement shall be entered into, or performed and enforced, as the President may direct, by or through the Institute.

Sec. 106. Whenever the President or any department or agency of the United States Government is authorized or required by or pursuant to United States law to render or provide to, or to receive or accept from, the people on Taiwan any performance, communication, assurance, undertaking or other action, such action shall, as the President may direct, be rendered or provided to,

or received or accepted from, an instrumentality established by the people on Taiwan.

Sec. 107. Whenever the application of a rule of law of the United States depends upon foreign law, or compliance with foreign law, the law applied by the people on Taiwan shall be considered foreign law for that purpose.

Title II

Sec. 201. Any department or agency of the United States Government is authorized to sell, loan or lease property, including interests therein, to, and to perform administrative and technical support functions and services for the operations of, the Institute upon such terms and conditions as the President may direct. Reimbursements to departments and agencies under this section shall be credited to the current applicable appropriation of the department or agency concerned.

Sec. 202. Any department or agency of the United States Government is authorized to acquire and accept services from the Institute upon such terms and conditions as the President may direct, without regard to the laws and regulations normally applicable to the acquisition of services by such department or agency.

Sec. 203. Any department or agency of the United States Government employing alien personnel in Taiwan is authorized to transfer such personnel, with accrued allowances, benefits and rights, to the Institute without a break in service for purposes of retirement and other benefits, including continued participation in any system established by law or regulation for the retirement of employees, under which such personnel were covered prior to the transfer to the Institute: *Provided*, That employee deductions and employer contributions, as required, in payment for such participation for the period of employment with the Institute, are currently deposited in the system's fund or depository.

Sec. 204. (a) Under such terms and conditions as the President may direct, any department or agency of the United States Government is authorized to separate from Government service for a specified period any officer or employee of that

department or agency who accepts employment with the Institute.

(b) An officer or employee separated under subsection (a) of this section shall be entitled upon termination of such employment with the Institute to reemployment or reinstatement with that department or agency or a successor agency in an appropriate position with attendant rights, privileges and benefits which the officer or employee would have had or acquired had he or she not been so separated, subject to such time period and other conditions as the President may prescribe.

(c) An officer or employee entitled to reemployment or reinstatement rights under subsection (b) of this section shall, while continuously employed by the Institute with no break in continuity of service, continue to participate in any benefit program in which such officer or employee was covered prior to employment by the Institute, including programs for compensation for job-related death, injury or illness; for health and life insurance; for annual, sick and other statutory leave; and for retirement under any system established by law or regulation: *Provided*, That employee deductions and employer contributions, as required, in payment for such participation for the period of employment with the Institute, must be currently deposited in the program's or system's fund or depository. Death or retirement of any such officer or employee during approved service with the Institute and prior to reemployment or reinstatement shall be considered a death in service or retirement from the service for the purposes of any employee or survivor benefits acquired by reason of service with a department or agency of the United States Government.

(d) Any employee of a department or agency of the United States Government who entered into service with the Institute on approved leave of absence without pay prior to the enactment of this Act shall receive the benefits of this title for the period of such service.

Sec. 205. The Institute shall be treated as a tax exempt organization described in section 501(c)(3) of the Internal Revenue Code of 1954, and shall not be an agency or instrumentality of

the United States. Employees of the Institute shall not be employees of the United States and, in representing the Institute, shall be exempt from section 207 of title 18, United States Code. The salaries and allowances paid to employees of the Institute shall be treated in the same way for tax purposes, under sections 911, 912 and 913 of the Internal Revenue Code of 1954, as salaries and equivalent allowances paid by departments and agencies of the United States Government.

Title III

Sec. 301. In addition to funds otherwise available for the purposes of this Act, there are authorized to be appropriated to the Secretary of State from time to time such funds as may be necessary to carry out such purposes. Such funds are authorized to remain available until expended.

Sec. 302. The Secretary of State is authorized to use funds made available to carry out this Act to further the maintenance of commercial, cultural and other relations with the people on Taiwan on an unofficial basis. The Secretary may provide such funds to the Institute for expenses directly related to the purposes of this Act, including--

- (1) Payment of salaries and benefits to Institute employees;
- (2) Acquisition and maintenance of buildings and facilities necessary to the conduct of Institute business;
- (3) Maintenance of adequate security for Institute employees and facilities; and
- (4) Such other expenses as may be necessary for the effective functioning of the Institute.

Sec. 303 Any department or agency of the United States Government making funds available to the Institute in accordance with this Act shall make arrangements with the Institute for the Comptroller General of the United States to have access to the books and records of the Institute and the opportunity to audit the operations of the Institute.

Sec. 304. The programs, transactions and

other relations carried out by the President or any department or agency of the United States Government with respect to the people on Taiwan since January 1, 1979, are approved and confirmed.

Sec. 305. The President is authorized to prescribe such rules and regulations as he may deem appropriate to carry out the purposes of this Act.

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